

**REMARKS/ARGUMENTS**

**- AMENDMENTS**

1. Claim 2 has been amended to further clarify that the horizontally extending side flanges (1) are generally parallel to the bottom side and (2) are generally perpendicular to the opposing side walls.
2. Claim 2 has been amended to further clarify that the shelf is permanently attached to at least the opposing side walls and the back wall.
3. Support for these amendments is found throughout the specification and particularly in Figure 1 of the application as filed. These amendments add no new matter to the specification, and require no additional searching on the part of the Examiner, these amendments are intended to merely clarify positions which were asserted by the Applicants previously.

***Claim Rejections 35 USC §103***

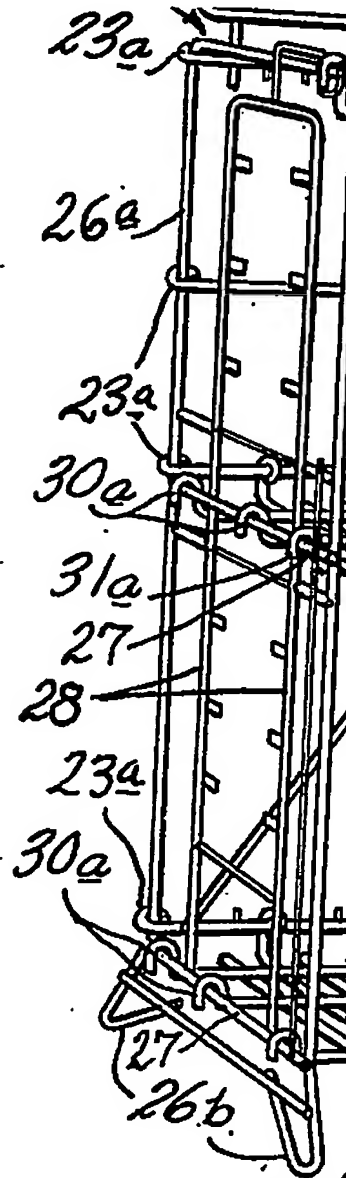
4. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. ***Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." MPEP § 706.02(j). Emphasis added.
5. There is one independent claim in this case, namely claim 2. If claim 2 is novel, then the Examiner's obviousness rejections are moot.
6. It is Applicants' position that claim 2, as amended above, is novel. Applicants' previous arguments regarding the novelty and non-obviousness likewise still apply.
7. The Examiner has rejected all of the claims of the application as being unpatentable over (1) Temple (USPN 2,680,522) in view of Spencer et al (USPN 5,759,502) and/or (2) Ochs (USPN 3,007,708) in view of Spencer et al (USPN 5,759,502).
8. Applicants have amended claim 2 to clarify that the horizontally extending side flanges (1) are generally parallel to the bottom side and (2) are generally perpendicular to the opposing

side walls. Applicants have amended claim 2 to clarify that the shelf is permanently attached to at least the opposing side walls and the back wall.

9. Claim 2, as amended, includes the limitations that:

a pair of horizontally disposed horizontally extending side flanges attached to the tops of said opposing side walls each of said opposing flanges having at least one hole therein, said side flanges generally parallel to said bottom, said side flanges generally perpendicular to said opposing side walls;

10. The Examiner argues that the Temple rack includes "a pair of horizontally disposed flanges having a hole therein (28 in figure 3 has unlabeled hole within it)." This structure looks like this:



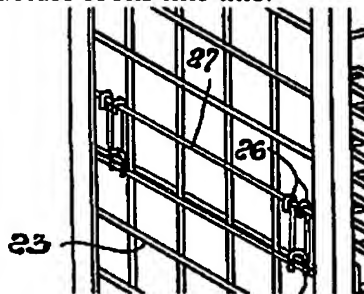
11. Applicants disagree. First, the structure the Examiner is attempting to refer to as a "flange" does not extend from the "top of said opposing side walls." Second, the Examiner's "flanges" are not horizontally disposed and extending. Third, the Examiner's "flanges" are not

generally parallel to said bottom. Fourth, the Examiner's "flanges" are not generally perpendicular to said opposing side walls.

12. Applicants have further added the limitation that the shelf(s) are permanently attached to the side walls and back. Temple clearly does not show this, in fact teaching away in showing that "[t]he rack is arranged, according to the invention, with hinged sides and shelves so that it may be folded flat..." (col. 1, ll. 21-23).

13. Temple thus fails to *"teach or suggest all the claim limitations."* Spencer does not add the missing claim limitations, nor has the Examiner even alleged so. Thus, Temple cannot serve as a proper §103 reference against Claim 2 or any of the claims that depend there-from.

14. The Examiner goes on to argue that Ochs "discloses a pair of horizontally extending side flanges (horizontal bars 27 on side walls 12 of figure 1 connected vertically to each other with hoods 21 on both sides of the rigid transport rack attached to the tops (figure 1:9 and 16) of the side walls (figure 1:12)." This structure looks like this:



15. Applicants disagree. First, the structure the Examiner is attempting to refer to as a "flange" does not extend from the "top of said opposing side walls." Second, the Examiner's "flanges" are not horizontally disposed and extending, they are, as Ochs describes it, "wire."

16. Applicants have further added the limitation that the shelf(s) are permanently attached to the side walls and back. Ochs clearly does not show this, in fact teaching away in showing "racks of light-weight form which can be readily assembled and disassembled and which may be readily adjustable..." (col. 1, ll. 11-13). Ochs further talks about the connection of the shelves as being "hook[ed] over one of the horizontal wires 27 of the vertical wall." (col. 2, ll. 22-23). Such a connection is clearly not permanent.

17. Ochs thus fails to *"teach or suggest all the claim limitations."* Spencer does not add the missing claim limitations, nor has the Examiner even alleged so. Thus, Ochs cannot serve as a proper §103 reference against Claim 2 or any of the claims that depend there-from.

18. In view of these amendments and discussion Applicants respectfully submit that the

present invention is not taught by the prior art, and that the Examiner's combinations fail to establish the presence of a prima facie case of obviousness.

***Conclusion***

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this 18<sup>th</sup> day of January, 2007.

Best regards,

A handwritten signature in black ink, appearing to read 'S. Nipper', written over a horizontal line.

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